



Commonwealth of Kentucky Justice & Public Safety Cabinet

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Criminal justice initiatives signed into law

FRANKFORT, Ky. – Significant laws relating to Kentucky's criminal justice system were passed by the General Assembly and signed into law by Gov. Steve Beshear, including initiatives to curb the rising costs of incarceration and improve the safety of law enforcement officers.

Among the most significant is House Bill 683, an omnibus criminal justice bill that requires that DNA samples be taken from all felons, including juveniles ages 13 and older who are convicted of violent or felony sex offenses. The Kentucky State Police Forensic Lab estimates the legislation could yield an additional 15,000 samples per year for the state database, with the potential to solve an additional 250 cases annually.

The bill also includes initiatives to reduce Department of Corrections' spending. Under the law, two full-time parole board members will be added to the Kentucky Parole Board, and the board will be allowed to conduct file review of certain Class C felons eligible for parole. Both measures will allow the parole board to review more cases, and to do so earlier in the month, so that parolees may be eligible for release sooner. Additionally, the legislation defines the method of monitoring for inmates completing their sentence on home incarceration to allow for GPS tracking of certain felons.

In addition:

➤ The just-concluded session saw the passage of two bills that preserve millions of dollars in federal funding by bringing the state into compliance with federal guidelines. Senate Bill 151 prohibits mandatory polygraphing of alleged sex offense victims,

bringing Kentucky into compliance with federal guidelines for receiving nearly \$1.6 million annually in STOP Violence Against Women Act (VAWA) Formula Grants. These grants are distributed by the Cabinet to agencies throughout the Commonwealth that serve victims of sexual assault and domestic violence. House Bill 384 brings state law into compliance with the federal Juvenile Justice & Delinquency Prevention Act (JJDP Act) of 2002, and aims to reduce the number of status offenders and dependent, neglected and abused children, or “non-offenders,” who are inappropriately or unnecessarily placed in secure detention.

➤ A law protecting consumers from unknowingly purchasing or inhabiting property that has been contaminated by methamphetamine passed on the final day of the session. Under House Bill 765, law enforcement officials can post notice of methamphetamine contamination on dwellings, and can assess penalties on property owners for removing the notice, or for not alerting prospective buyers or renters about the contamination. The law also allows property owners to self-clean the property if officials determine methamphetamine ingredients were present, but there was no evidence that a meth cook occurred. The bill is pending signature by the governor.

➤ Child victims or witnesses, ages 12 and younger, of violent offenses will be allowed to testify by closed circuit or video testimony when the court determines there is a compelling need, under Senate Bill 13. The bill protects child victims of violent crime and Internet solicitation from possible revictimization and traumatization by having to face the defendant in court, if the child would be unable to reasonably communicate in their presence.

➤ Several bills passed this legislative session to improve safety for the Kentucky State Police. House Bill 639 directs the Firearms Confiscation Fund – created by the selling of confiscated firearms from all local, city and county law enforcement agencies – to first be used to purchase body armor before purchasing firearms and ammunition. The bill also allots KSP, which receives the confiscated items and handles their sale, 20% of the gross proceeds of each sale. KSP officials indicate the agency intends to use proceeds to purchase tasers for its officers, part of the agency’s focus on utilizing non-lethal weaponry.

➤ Police service dogs, which are trained and required to occasionally bite people in the line of duty, will be exempted from the 10-day quarantine law after biting a human, under Senate Bill 159. Prior to this, the police dog would be quarantined for 10 days, even though the animal had been fully vaccinated, taking it out of service for that time.

➤ House Bill 696 allows vehicle accident reports to be accessed through the KSP website, eliminating the need for accident victims to go to a KSP post or the local clerk's office. The bill also allows KSP to provide limited vehicle accident report data to alert potential buyers when a vehicle has been in an accident. Until now, KSP could not allow vendors such as CARFAX and EXPERIEN to access the data. Consumers in Kentucky who purchased a used car could not trace the vehicle's history to determine whether the vehicle has been in an accident.

➤ Under Senate Bill 226, KSP will be required to reimburse sworn officers for the "rider" policy they purchase for their personal vehicles that extends liability coverage to their police vehicle. The legislation closes a gap in coverage that currently occurs if the officer is injured in the line of duty by an uninsured or underinsured motorist. While workers' compensation covers most of the losses, there is still a significant gap in pay from sick leave and/or compensatory time that the officer must cover.

Highlights of Justice and Public Safety Cabinet Bills:

HB 683 Omnibus Criminal Justice Bill

- HB 639 updates the Kentucky Revised Statutes to address important scientific advancements and allow the collection of DNA samples from all felons for submission to the National CODIS (Combined DNA Index System) database maintained by the FBI.
- This legislation also clarifies that DNA samples shall be collected from juveniles, age 13 and older, who are adjudicated as public offenders on violent offenses and felony sex offenses.
- The Kentucky State Police will supply DNA kits to all collectors. The KSP Forensic Lab will then process the DNA sample and create a profile in the DNA database.
- A Sex Offender Registrant (SOR) shall provide a DNA sample to the appropriate probation and parole office when appearing for a new photograph.
- Prior to this legislation, Kentucky was one of only five states that did not collect a DNA sample from all felons.
- The bill adds two full-time parole board members to the Kentucky Parole Board, and allows the board to conduct file review of certain Class C felons eligible for parole. Both measures will allow the parole board to review more cases, and to do so earlier in the month, so that parolees may be eligible for release sooner.
- Additionally, the legislation defines the method of monitoring for inmates completing their sentence on home incarceration to allow for GPS tracking of certain felons.

SB 151 Victims Polygraph Bill

- The 2005 reauthorization of the Violence Against Women Act (VAWA) of 1994 imposed certain requirements on state and local recipients of the STOP Violence Against Women Formula Grants.
- VAWA requires that the prohibition against polygraphing victims be enacted by each state before January 5, 2009 to ensure compliance with federal requirements and continued eligibility for STOP Violence Against Women Formula Grants.
- Each year, Kentucky receives approximately \$1.6 Million through this funding mechanism to distribute to agencies serving victims of sexual assault and domestic violence across the Commonwealth.
- Many of these programs receive funding through other sources (e.g., Cabinet for Health and Family Services, local fundraising). However, certain aspects of their operations are dependent on VAWA grants, and unlikely to be replaced if funds are lost, especially in light of the current economic and state budget limitations.
- As with many federal programs, VAWA grants have seen reductions in recent years, making the dollars currently received all the more precious and in need of preservation.
- Key elements of the VAWA Prohibition Against Victim Polygraphing:

- No law enforcement officer, prosecuting officer or other government official shall ask or require an adult, youth, or child victim of an alleged sex offense as defined under Federal, state, Indian tribal government, territorial government, or unit of local government to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation of such an offense.
- The refusal of a victim to submit to a polygraph or other truth telling examination shall not prevent the investigation, charging, or prosecution of an alleged sex offense by a state, Indian tribal government, territorial government, or unit of local government.

HB 384 JJDP Act Compliance Bill

- From 2004 to 2006, over 4,300 Kentucky youth were placed in secure detention for violations of valid court orders alone, on status offenses which would not even be criminal conduct if committed by an adult.
- This bill addresses the federal requirements to bring the Kentucky Revised Statutes into compliance with the Juvenile Justice & Delinquency Prevention Act of 2002 (JJDP Act), and to reduce the number of status offenders and dependent, neglected and abused children, or “non-offenders,” inappropriately or unnecessarily placed in secure detention.
- Each year Kentucky receives approximately \$750,000 in federal grant dollars through the JJDP Act to provide important statewide programs such as Alternatives to Detention, Disproportionate Minority Contact, and Improvement of the Juvenile Justice System.
- Under the federal JJDP Act & Guidelines, Kentucky may only receive 56 compliance violations [of federal law] each year for the inappropriate secure detention of status offenders or non-offenders. In 2006 and 2007, Kentucky exceeded the number of detention violations allowable under the JJDP Act/ Guidelines. Had this bill not passed this session, Kentucky would have begun to lose part of the approximately \$750,000 in federal funds received annually prior to the 2009 Legislative Session.

HB 765 Methamphetamine Contamination Clean-up

- HB 765 amends the process for dealing with habitable properties in which law enforcement finds indications of methamphetamine manufacturing. It adds consumer protection elements to reduce the cost to innocent property owners. A tiering system is adopted that dictates the level of cleaning required to decontaminate a property on the amount of methamphetamine produced or the level of meth cooking that has occurred.
- Unlike the previous law that required decontamination regardless of the level of cook, this amendment allows a property owner to self-clean the property when there is no evidence that a cook has occurred but the suspects merely possessed methamphetamine precursors. When a property owner believes the property is clean, the Environmental and Public Protection Cabinet tests the property and DPH will remove the methamphetamine contamination notice.
- The level of cooking or amount of meth produced is determined by an assessment conducted by the law enforcement agency that conducts the investigation. It is provided to EPPC on a form created and adopted by EPPC. This is a separate document that is

not related to the investigation thus it does not subject an open investigation to open records. Upon discovering a contaminated property, law enforcement officials will also post a "methamphetamine contamination notice." This is a Department of Public Health notice but the amendment gives law enforcement the authority to post the notice. The notice can only be removed by DPH but there is a provision that a homeowner may appeal the placement of the notice through an administrative hearing with DPH.

- The amendment creates penalties for property owners who remove the methamphetamine contamination notice or who sell, lease or rent a property without providing notice to the individual seeking to inhabit the property. Removing the notice is now a Class A misdemeanor. Selling, leasing or renting a contaminated property without written notice to the individual seeking to inhabit the property is a Class D felony. These penalties were created in response to several instances in which innocent consumers purchased, leased or rented a contaminated property without knowledge. It is a serious health hazard, especially to children.

SB 13 Closed circuit or video testimony of child victims

- SB 13 expands KRS 421.350 to allow child victims or witnesses, ages 12 and younger, of violent offenses under KRS 439.3401 or unlawful use of electronic means to induce a minor to engage in sexual or other prohibited activities, (e.g. Internet Solicitation) under KRS 510.155 to testify by closed circuit or video testimony when the court determines there is a compelling need.
- The intent of SB 13 is to protect child victims of violent crime and internet solicitation from possible revictimization and traumatization by having to face the defendant in court, if the child would be unable to reasonably communicate in the presence of the defendant.
- Upon motion of any party, the court may allow closed circuit or videotaped testimony as long as the defendant's rights under Confrontation Clause are protected.
- Closed circuit or video testimony is only available upon motion of any party. The motioning party must then prove a compelling need for closed circuit testimony or video testimony.

HB 639 Firearms Confiscation Fund

- History: KRS 16.220 was adopted in 1998 to allow local, county and other law enforcement agencies to purchase body armor. The statute creates the confiscated firearms fund by requiring the Kentucky State Police to receive confiscated firearms from all local, city and county law enforcement agencies and to sell them at auction. This fund is used by local, city and county agencies to purchase body armor, firearms and ammunition.
- While KSP expends significant resources to provide funding for this program, the agency has only received monies from this fund on one occasion. In 2003-2004 the House included in the budget bill a one-time \$175,000 grant from the fund to the Kentucky State Police to purchase holsters for new firearms. Surplus Property in the Finance and Administration Cabinet receives ten percent of the gross sales for auctioning the firearms.
- KSP's proposed amendment to KRS 16.220 prioritizes the fund to ensure that body armor is the first priority of the fund with firearms and ammunition being second. It also

allows KSP to receive 20% of the gross proceeds of each sale, which will recoup the agency's cost.

- **CARRYING CONCEALED DEADLY WEAPON (CCDW) AMENDMENT:** Amends KRS 237.110 to address a recent Kentucky Court of Appeals injunction requiring KSP to issue carried concealed permits to resident aliens. This amendment establishes the review process by which KSP shall issue CCDW permits to resident aliens and a narrow category of nonresident aliens who meet the exceptions by federal guidelines.

SB 159 Police service animal exemption

- Exempts service animals and service animals in training who are vaccinated from a 10-day quarantine after biting a human.
- Police service dogs are trained and required to occasionally bite people in the line of duty.
- Current law would allow the dog to be quarantined for 10 days, even though the dog has been fully vaccinated and there is no reason to believe it is rabid.
- Such quarantine would lead to a serious conflict between police and health officials, causing the loss of the dog's services to the police for the period of quarantine.

HB 696 Online Vehicle Accident Reports

- The bill clarifies that vehicle accident reports are not public records and are exempt from open records under KRS Chapter 61.
- The bill also allows KSP to contract with outside vendors to provide vehicle accident reports to the public using our website. This service eliminates the necessity that persons in an accident must go to a KSP post or local clerk's office to obtain the reports.
- KSP may provide limited vehicle accident report data for use as a consumer protection tool to alert potential buyers when a vehicle has been in an accident.
- Currently, KSP cannot allow vendors like CARFAX and EXPERIEN to access the data. Consumers in Kentucky who purchase a used car cannot trace the vehicle's history to determine whether the vehicle has been in an accident.
- The legislation also allows KSP to recoup the costs for providing the public with the online service by allowing us to charge a convenience fee for the vehicle accident report.
- KSP will continue to provide the vehicle accident reports at KSP posts.
- Parties in litigation may now obtain accident reports without a subpoena.
- The bill does not change which parties may obtain an accident report.

SB 226 Enhancing KSP insurance requirements

- Senate Bill 226 amends KRS 16.075 regarding Kentucky State Police insurance. The current statute allows Kentucky State Police to reimburse a trooper for insurance on their duty vehicle.
- KSP policy is that troopers shall be reimbursed for the cost of insurance for duty vehicles. Sworn officers obtain a “rider” policy on their personal insurance policy that extends liability coverage to their duty vehicle. There is, however, a gap in coverage. Insurance companies interpret the policy as precluding uninsured and underinsured motorist coverage. When a sworn officer is injured in the line of duty by an uninsured or underinsured motorist, there is no coverage from their policy. While workers’ compensation covers most of the losses, there is still a significant gap in pay from sick leave and/or compensatory time that the officer must cover. There is no mechanism for the officer to recoup these losses.
- SB 226 requires KSP to reimburse a sworn officer for the “rider” policy and additional uninsured and underinsured motorist coverage attached to a rider. These policies should close the gap and ensure that an officer injured in the line of duty by an uninsured or underinsured motorist does not have to suffer a significant financial loss as the result of his or her injury.